IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Crl.MC.No. 2927 of 2007()

CC.507/2005 of ADDL. CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

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PETITIONER: ACCUSED:

PRITHIVIRAJ B.S., S/O.BHASKARN NAIR,
RESIDING AT 13, MULGRAVE ROAD, SURREY, CROYDON,
CRO 1BL, UNITED KINGDOM, PERMANENTLY RESIDING AT
FLAT NO.XI M, HORIZON PARK APARTMENT,TRIVANDRUM-10
KERALA.

BY ADV. SRI.S.KRISHNAKUMAR
SMT.K.V.JAYANTHI

RESPONDENTS: RESPONDENT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2927 of 2007

Dated this the 4th day of October, 2007

ORDER

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Section 332 I.P.C. The alleged incident occurred on 7.2.2005. All other offences alleged are bailable. Section 332 I.P.C, after the amendment by Act 25 of 2005, is non bailable now w.e.f 23.06.06. Final report has already been filed. Cognizance has already been taken. The learned Magistrate has registered the case as C.C.No.507 of 2005. The petitioner is a person employed abroad. He has not come to India after cognizance was taken. The petitioner now comes to know that a warrant of arrest has been issued by the learned Magistrate to procure his presence. The petitioner, in these circumstances, has come to this Court with a prayer to quash the final report in so far as it relates to the allegation under Section 332 I.P.C.

2. The learned counsel for the petitioner submits that the petitioner is willing to stand trial for the other offences. But the offence under Section 332 I.P.C is non bailable. Because the said offence is non bailable, the petitioner apprehends that the learned Magistrate may remand him to custody when he appears before the

learned Magistrate. The petitioner is coming back to India by the middle of November, 2007. The petitioner is willing to appear before the learned Magistrate. He is willing to apply for bail. But he apprehends that since the non bailable offence under Section 332 is also alleged, the learned Magistrate may not grant regular bail to the petitioner. The learned counsel for the petitioner further urges that charge under Section 332 I.P.C is not sustainable and is hence liable to be quashed.

3. The jurisdiction which is sought to be invoked is the extraordinary inherent jurisdiction under Section 482 Cr.P.C. Ordinarily and normally, when a person faces such allegation, it is for him to appear before the learned Magistrate and claim discharge for that offence which according to him is not maintainable. It is not necessary for this Court to invoke the powers under Section 482 Cr.P.C in every case where there is a possibility of the plea for discharge for any one of the Sections being upheld by the learned Magistrate. I find absolutely no reason in this case for this court to invoke the powers under Section 482 Cr.P.C to quash one of the several charges that are raised against the petitioner.

4. The apprehension of the petitioner that the offence being non bailable the petitioner may not be granted bail can easily be

allayed by issuing appropriate directions under Section 438 Cr.P.C. On merits as also on the ground that the offence when it was committed was bailable, I am persuaded to issue directions under Section 438 Cr.P.C in favour of the petitioner.

5. This Crl.M.C is, in these circumstances, allowed in part. The following directions are issued under Section 438 Cr.P.C in favour of the petitioner.

i) The petitioner shall surrender before the learned Additional Chief Judicial Magistrate, Trivandrum on or before 01.12.2007;

ii) He shall be released on regular bail by the learned Magistrate on condition that he executes a bond for Rs.25,000/- (Rupees Twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

iii) He shall make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so;

iv) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

v) If the petitioner were arrested prior to his surrender on or before 01.12.2007 as directed in clause (1) above, he shall be released from custody on his executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) without any sureties undertaking to appear before the learned Magistrate on or before 01.12.2007.

(R.BASANT, JUDGE)

rtr/-